



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

Credit Union Australia Limited
ACN 087 650 959
Level 23, 145-147 Ann Street
Brisbane QLD 4000

1. DEFINITIONS

- 1.1 In addition to terms defined elsewhere in this undertaking, the following definitions are used:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

CUA means Credit Union Australia Limited ACN 087 650 959.

Package means the CUA Rate Breaker Package home loan product issued by CUA in accordance with the Terms and Conditions.

Terms and Conditions means the Package terms and conditions set out in the document entitled *CUA Rate Breaker Package Terms & Conditions* dated 28 May 2012.

- 1.2 Except so far as the contrary intention appears in this undertaking the interpretation provisions in Part 1.2 of the *Corporations Act 2001* (Cth) and Part 2 Division 2 Subdivision B of the ASIC Act apply for the purposes of this undertaking as if the provisions of those acts were provisions of this undertaking.

2. BACKGROUND

ASIC's role

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

Details of Conduct

- 2.2 CUA issues home loans to customers throughout Australia.
- 2.3 The Package was marketed as offering a 1% discount below the average of the advertised standard variable home loan rates of four major banks and was available from early 2012.

- 2.4 CUA advertised the Package in a multi-media campaign that ran from 29 May 2012 until 21 July 2012 (**the Campaign**). CUA extended its branch advertising of the Package until at least 18 December 2012. The Package continues to be advertised on the CUA website (www.cua.com.au). Since the beginning of the Campaign, CUA has issued 2083 loans pursuant to the Package.
- 2.5 The Campaign included advertisements which were published as follows:
- (a) television (15 second and 30 second advertisements in Sydney, Brisbane, Melbourne and Wollongong);
 - (b) cinema (15 second advertisements in Sydney, Brisbane, Melbourne and regional centres in NSW, Queensland and Victoria);
 - (c) branch (posters, flyers, brochures and statement inserts);
 - (d) online;
 - (e) direct marketing (letters and emails);
 - (f) transit (buses and trams in Sydney, Brisbane and Melbourne); and
 - (g) website (www.cua.com.au)
- (collectively referred to as **the Advertisements**).
- 2.6 Each of the Advertisements included words to the effect: "We see you saving 1.0% on the big banks' advertised average standard variable home loan rates" (**the 1% Discount Statement**).
- 2.7 The Terms and Conditions included the following:
- (a) an interest rate discount will be applied to the reference rate for the loan (**the Discount**);
 - (b) the reference rate for the loan is the average of the standard variable home loan rates advertised by the four major banks (Westpac, Commonwealth Bank, National Australia Bank and ANZ) (**Reference Rate**);
 - (c) a minimum floor percentage rate (**Floor Rate**) will be applied to the home loan. If the Reference Rate, less the Discount, falls below the Floor Rate, the interest rate of the Package home loan will remain at the Floor Rate (**Floor Rule**); and
 - (d) CUA may vary the Discount and the Floor Rate at any time (**Variation Rule**).
- 2.8 The Discount has remained at 1% since the commencement of the Package.
- 2.9 The Floor Rate has remained at 3% per annum since the commencement of the Package.

2.9 The Floor Rule and the Variation Rule were not disclosed in all the Advertisements, and where it was disclosed it was in very small print and not prominent.

ASIC's concerns

2.10 ASIC is concerned that in circumstances where the 1% Discount Statement was the primary message and the most prominent feature of the Advertisements;

- (a) the overall and immediate impression conveyed by the Advertisements was that the Discount applied for the life of any loan issued pursuant to the Package;
- (b) the Floor Rule and the Variation Rule were not disclosed in all the Advertisements and where reference was made to the Floor Rate and the Terms and Conditions it was not sufficiently prominent;
- (c) in all the circumstances, the Advertisements were potentially misleading or deceptive or likely to mislead or deceive as the Discount could be changed at any time by the application of the Variation Rule and/or the Floor Rule; and
- (d) CUA may have contravened section 12DA of the *ASIC Act*, which prohibits such conduct in relation to financial services.

Acknowledgement of concerns

2.10 CUA acknowledges:

- (a) ASIC's concerns;
- (b) that those concerns are reasonably held;
- (c) that CUA must comply with the requirements of this Enforceable Undertaking in order to address ASIC's concerns and to ensure compliance with the ASIC Act; and
- (d) that the steps set out in this Enforceable Undertaking are necessary to address ASIC's concerns and to ensure compliance with the ASIC Act.

2.11 ASIC notes that:

- (a) CUA has worked constructively with ASIC throughout its investigation into CUA's conduct in order to resolve ASIC's concerns;
- (b) CUA has already taken steps to address ASIC's concerns by making changes to the webpage dedicated to the Package on CUA's website (www.cua.com.au); and
- (c) CUA advise that it has not heretofore reduced the Discount or sought to rely on the Floor Rule.

3. UNDERTAKINGS

3.1 Under section 93AA of the ASIC Act, CUA has offered, and ASIC has agreed to accept, as an alternative to pursuing civil action against CUA under sections 12GNB and 12GD of the ASIC Act for contraventions of section 12DA of the ASIC Act, the following undertakings:

- (a) CUA will ensure that for all consumers who have:

- i. entered into a loan agreement pursuant to the Package as at 31 August 2013; or
- ii. submitted an application for a loan pursuant to the Package on or prior to 31 August 2013 for which a loan agreement is entered into by 28 February 2014,

the Discount applied to the Reference Rate will be no less than 1% for the duration of the loan, regardless of the prevailing Floor Rate or Reference Rate, except that the interest rate for a loan agreement under the Package will not be less than 0%;

- (b) In any future advertising of the Package, CUA will highlight the Floor Rate, the Floor Rule and the Variation Rule with sufficient prominence;
- (c) On or before 30 September 2013, CUA will give notification (in the form of Annexure A) of its undertaking in clause 3.1(a) to those customers who have entered into a loan agreement pursuant to the Package as at 31 August 2013;
- (d) On or before 1 April 2014, CUA will give notification (in the form of Annexure A) of its undertaking in clause 3.1(a) to those customers who have prior to 31 August 2013 submitted an application for a loan pursuant to the Package for which a loan agreement is entered into by 28 February 2014;
- (e) CUA undertakes that it will pay the costs of its compliance with this enforceable undertaking; and
- (f) CUA will provide all documents and information requested by ASIC from time to time for the purpose of assessing CUA's compliance with the terms of this enforceable undertaking.

4. ACKNOWLEDGEMENTS

4.1 CUA acknowledges that ASIC:


- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

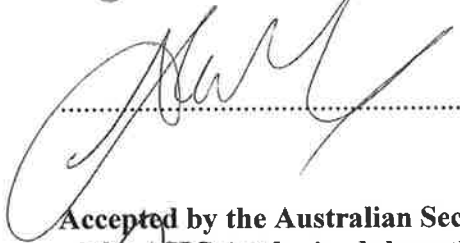
4.2 Further CUA acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct; and
- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

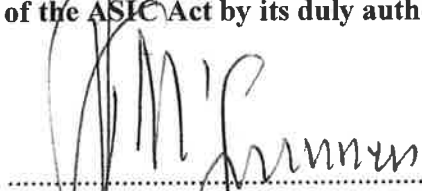
4.3 CUA acknowledges that this undertaking has no operative force until accepted by ASIC, and CUA and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Executed by **CREDIT UNION)**
AUSTRALIA LIMITED in accordance with)
s127 of the *Corporations Act 2001*:


..... Director


..... ~~Director~~/Company Secretary

**Accepted by the Australian Securities and Investments Commission under s93AA
of the ASIC Act by its duly authorised delegate:**


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16 August 2013

David McGuinness, Senior Executive, Financial Services Enforcement
Delegate of the Australian Securities and Investments Commission